



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,491	01/09/2002	Michael Wayne Brown	AUS920010970US1	6098
43307 7590 07/28/2010				
IBM CORP (AP) C/O AMY PATTILLO P. O. BOX 161327 AUSTIN, TX 78716				
EXAMINER				
DUONG, OANH L				
ART UNIT		PAPER NUMBER		
2455				
NOTIFICATION DATE		DELIVERY MODE		
07/28/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AMY@JONPATTILLO.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* MICHAEL WAYNE BROWN and MICHAEL A. PAOLINI

---

Appeal 2008-006150  
Application 10/042,491<sup>1</sup>  
Technology Center 2400

---

*Before* JEAN R. HOMERE, DEBRA K. STEPHENS, and JAMES R.  
HUGHES, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>2</sup>

---

<sup>1</sup> Application filed January 9, 2002. The real party in interest is International Business Machines Corp. (Br. 2.)

<sup>2</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

The Appellants appeal from the Examiner's rejection of claims 1-27 under authority of 35 U.S.C. § 134(a). Claims 28-30 have been canceled. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Appellants' Invention*

Appellants invented a system and method for persistently displaying designated content, such as advertisements, in the white space or background space of a document. (Spec 1, ll. 10-14; 7, l. 29 to 9, l. 10.)<sup>3</sup>

### *Representative Claim*

Independent claims 1 further illustrates the invention. It reads as follows:

1. A method for rendering a document on a display utilizing a viewer program running on a computer system, comprising:
  - receiving primary content of the document to be displayed;
  - identifying secondary content to be displayed in conjunction with the primary content;
  - determining whether there is available white space within the primary content, when displayed within a display area, to accommodate the secondary content;

---

<sup>3</sup> We refer to Appellants' Specification ("Spec.") and Appeal Brief ("Br.") filed July 16, 2007. We also refer to the Examiner's Answer ("Ans.") mailed September 11, 2007.

embedding the secondary content in the available white space if it is determined that there is available white space to accommodate the secondary content; and

responsive to determining the white space is not available, reflowing the primary content to form suitable white space in the display area and embedding the secondary content in the suitable white space formed.

### *References*

The Examiner relies on the following reference as evidence of unpatentability:

Ballard	US 6,182,050 B1	Jan. 30, 2001
Huat	US 2002/0133565 A1	Sept. 19, 2002 (filed Mar. 14, 2001)
Shema	US 2002/0194190 A1	Dec. 19, 2002 (filed Oct. 4, 2001)
Porter	US 2003/0052923 A1	Mar. 20, 2003 (filed June 24, 1999)
Mitchell	US 6,983,331 B1	Jan. 3, 2006 (filed Oct. 17, 2000)

### *Rejections on Appeal*

The Examiner rejects claims 1-4, 7, 8, 12, 13, 15, 16, 19, 20, 22, 24, 26, and 27 under 35 U.S.C. §103(a) as being unpatentable over Huat.

The Examiner rejects claims 5, 14, and 21 under 35 U.S.C. §103(a) as being unpatentable over Huat and Porter.<sup>4</sup>

The Examiner rejects claims 6 and 23 under 35 U.S.C. §103(a) as being unpatentable over Huat, Porter, and Shema.

The Examiner rejects claims 9, 18, and 25 under 35 U.S.C. §103(a) as being unpatentable over Huat and Mitchell.

The Examiner rejects claim 10 under 35 U.S.C. §103(a) as being unpatentable over Huat and AAPA.

The Examiner rejects claims 11 and 17 under 35 U.S.C. §103(a) as being unpatentable over Huat and Ballard.

## ISSUES

Based on our review of the administrative record, Appellants' contentions, and the Examiner's findings and conclusions, the pivotal issues before us are as follows.

1. Does the Examiner err in finding the Huat reference would have taught or suggested reflowing primary content to form suitable white space in a display area responsive to determining that insufficient white space is available, and embedding secondary content in the suitable white space formed?

---

<sup>4</sup> The Examiner's rejection actually states that claims 5, 15, and 21 are rejected; however, claim 15 is listed in two separate rejections, claim 14 is not listed in any rejection, and claims 5, 14, and 21 have a similar scope. Thus, we understand the Examiner to reject claims 5, 14, and 21 together. The Appellants do not discuss claims 14 or 15 in their Brief. We therefore view the inclusion of claim 15 and the exclusion of claim 14 in the stated rejection as a harmless typographical error.

2. Does the Examiner err in finding the Huat reference would have taught or suggested receiving a user action to change a portion of the primary content currently displayed in the display area?

3. Does the Examiner err in finding the Huat and Porter references would have taught or suggested receiving a designation associated with receiving secondary content indicating that the secondary content is to be persistently displayed within white space within the display area regardless of a user action?

4. Does the Examiner err in finding the Huat, Porter, and Shema references can properly be combined, and would have taught or suggested retrieving the designation indicating that the secondary content is to be persistently displayed from a database accessible to the viewer program?

5. Does the Examiner provide a proper rationale for the Huat and AAPA reference combination?

## FINDINGS OF FACT (FF)

### *Appellants' Specification*

1. Appellants' Specification explains the process of identifying, creating, and filling white space (unused space) in a display with additional content (e.g. advertising), as well as rearranging a document to fit around the additional content:

the invention enables a Web browser . . . to identify the white space, i.e., background space, of a document; and to utilize the identified white space for displaying content that has been designated as content that is to be persistently displayed regardless of user actions. Specifically, a Web browser examines the primary Web page content for available white space having a size that will allow the designated content to fit

within it. If no such white space is currently available as the Web page is currently being painted in its displayed frame, the browser will reflow the underlying primary content to generate the appropriate size of white space for the designated content. The browser then renders the white space filler, i.e., the designated content, and paints the display with the underlying primary Web page content with the designated content embedded in the previously available white space. If the underlying primary Web page is scrolled, or its frame resized, such that the designated content would no longer be fully visible, the browser relocates the designated content to any appropriately sized available new white space. If such new white space does not currently exist, then the browser reflows the underlying primary content to generate the appropriately sized white space. This process continues to be reiterated as needed.

(Spec. 8, l. 16 to 9, l. 10.)

[T]he browser keeps the advertising content viewable on the underlying primary Web page without obscuring the underlying primary Web page content. In response to a user scrolling the primary Web page, the browser flows the primary Web page content around the advertising content. That is, the primary Web page content flows around an embedded object such as an embedded object containing advertising content. Although it appears as though the embedded object is moving down through the text during a scrolling operation, the browser is flowing the primary Web page content upward around the embedded object.

(Spec. 16, ll. 10-20.)

2. Appellants' Specification further explains that markup languages generate a flowing text document (Spec. 2, l. 18) utilizing a Document Object Model (DOM), which "essentially breaks down the anatomy of a Web page into components that can be manipulated" (Spec. 2, ll. 28-29). (Spec. 2, l. 12 to 3, l. 27.) When a browser displays a document (Web page), the browser renders each element in the DOM by traversing the

hierarchical structure of the rendering tree (DOM) from left-to-right and top-down. (Spec. 3, l. 4 to 4, l. 2.) A “programming script” can modify the DOM tree, rearranging the document (Web page) content:

[a] programming script, such as Java Script, can traverse the tree, modify the tree, and move a graphical image from one element of the tree to another element of the tree. For example, the Document Object Model enables programming script to specify an image at a location, text at a location, a frame, text within a frame, an image within a frame, etc. The browser then reflows the document (top-down, left-to-right) according to the changes made to the DOM tree as the reflowed document is rendered to the display.

(Spec. 4, ll. 3-12.)

### *Huat Reference*

3. Huat describes a system for displaying message content data in an unused portion of a web browser display space. (¶ [0001].) Specifically, Huat describes a clear space intermediate message display process that identifies unoccupied (unused) areas of the web page displayed by a web browser, generates pop-up advertisement messages, and displays the messages in the unused areas of the web page. (¶¶ [0034], [0039], [0042], [0043], [0045]-[0047], [0050]-[0052].)

4. Huat also describes determining whether adequate clear space area exists within an active window, displaying the message if adequate clear space exists, and if not, waiting until the active window changes such that adequate clear space exists (¶¶ [0042]-[0043], [0045]-[0047]):

If . . . it is determined that clear space is not available within the active window, the clear space display process does not download and display the intermediate message. Instead, it waits for a change in the active window that may create the



availability of clear space within the window, step 410. Such a change could be the reloading of another web page or the scrolling of a web page within the display area.

(¶ [0043].)

5. Huat periodically scans the active window, e.g., every two seconds, for clear space to display the message(s). (¶ [0045].)

6. Huat supports a variety of advertising formats and techniques utilized and embedded in web pages, including pop-up messages and Java applets, which have standard GUI elements allowing resizing, scrolling, etc. Huat utilizes, for example, HTML, to display the advertising in an unused portion of the active web browser display window. (¶¶ [0051]-[0052].)

#### *Porter Reference*

7. Porter describes a display system including a display surface with an exclusive use display surface area to persistently display content including advertisements (¶ [0002]; Fig. 5) “to overcome the prior art disadvantage of losing visibility to some of the rendered contents (such as banner advertisements), when the rendered contents (such as a displayed page), is scrolled up and down within a display window (such as a browser window)” (¶ [0019]).

8. Porter describes an exclusive use display area manager (EDA manager) that adjusts and coordinates the locations of shared display areas and exclusive use display areas (EDAs) so that advertisements can be persistently displayed in assigned EDAs independent of activity in the shared display areas. (¶¶ [0031], [0037].) In operation, Porter’s system requests a web page from a web server that “includes a script, e.g. a Javascript.” (¶ [0040].) The EDA manager provides advertising

information (a URL for the advertisement(s)) to an advertisement rendering program assigned to a particular EDA in response to the script. The advertisement rendering program then retrieves and renders the advertisement(s) in the EDA. (¶¶ [0040], [0041]; Figs. 5, 7, 8.)

### *Shema Reference*

9. Shema describes a system and method for displaying electronic graphics with embedded information, in particular, reference designation links. (¶ [0002].) Shema explains that its intelligent graphics viewer allows a user to view a graphic stored in an intelligent graphic file, and select a reference designation in the graphic. The system retrieves information related to the reference designation from a database, and the viewer magnifies the reference designation and displays textual information associated with the reference designation. (¶¶ [0014], [0051].)

## ANALYSIS

### *Issue 1: Rejection of Claims 1, 12, and 19 under § 103*

The Examiner finds that the Huat reference teaches or suggests each feature of Appellants' claim 1 and maintains that the claim is properly rejected. (Ans. 3-5, 17-18.) Specifically, the Examiner finds that Huat explicitly discloses receiving primary content, identifying secondary content, determining whether white space is available, and embedding secondary content in the white space. The Examiner finds that Huat does not explicitly disclose reflowing primary content in response to determining that white space is not available; however, the Examiner finds that Huat describes waiting for a change in the active window and determining that white space

is available to display the secondary content. From these findings the Examiner concludes that one ordinarily skilled in the art at the time of Appellants' invention would have understood that "Huat's disclosed mechanism for 'scrolling of a web page within the display area to create the availability clear/white space' is substantially equivalent to 'reflowing the primary content to form suitable white space in the displayed area'" (Ans. 5). (Ans. 3-5.)

Appellants, on the other hand, contend that the Huat reference does not teach or suggest reflowing content to form suitable white space in the display area. (Br. 15-18.) Specifically, Appellants contend: (1) the Examiner's construction of the limitation is overly broad (Br. 17), (2) "Huat describes waiting for the user to select to display *different content* within the display area" (in contrast to "reflowing the *content* to form white space *within the display area*") (Br. 15), and (3) that "reflowing content and forming white space within the display area have the inherent properties of readjusting the underlying layout of the content (reflowing the content) to add white space to the layout within the display area (to form white space within the display area)" (Br. 16). Accordingly, we decide the question of whether the Examiner erred in finding the Huat reference would have taught or suggested reflowing primary content to form suitable white space in a display area responsive to determining that insufficient white space is available, and embedding secondary content in the suitable white space formed.

After reviewing the record on appeal, we agree with the Examiner's findings that Huat discloses each feature of Appellants' claim 1 except "reflowing primary content to form suitable white space." We also agree

with the Examiner's finding that Huat describes waiting for a change in the active window and determining that white space is available to display the secondary content. We further agree with the Examiner's conclusion that Huat's disclosures would have at least suggested to an ordinarily skilled artisan to rearrange primary content to form white space in the display area.

The dispute before us hinges on whether Huat discloses "reflowing" primary content to "form" suitable white space in a display area as claimed. In particular, the Examiner and Appellants disagree on what constitutes reflowing and forming, and the construction of these terms is critical to resolving this dispute. We begin our analysis by construing Appellants' claim, giving the claim the "broadest reasonable interpretation consistent with the [S]pecification" and "claim language should be read in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted).

Appellants do not explicitly define reflowing or forming in the claim or in their Specification. Appellants also do not specify the means by which the content is reflowed. Appellants, however, explain that their browser arranges (rearranges) text (in particular flowing text documents), images, and other GUI elements around one another, and renders (re-renders) these in a display according to a document object model (DOM). (FF 1-2.) In view of this disclosure, we broadly but reasonably construe the disputed limitation to simply mean rearranging (reflowing) primary content, or that primary content is rearranged, such that suitable white space appears (is formed) in the display area so that the secondary content may be embedded.

Huat explicitly describes identifying unused areas (white space) of web page content (HTML documents, e.g., flowing text documents) displayed by a web browser, and generating pop-up advertisement messages in the unused areas. Huat also describes waiting until the active window changes, and a sufficient unused area is present (is formed), to display pop-up advertisement messages. Huat scans the active window for clear space to display the messages, and displays them accordingly. (FF 3-6.) We find that Huat *explicitly* teaches or suggests the disputed limitation – Huat describes rearranging primary content by waiting until primary content is rearranged, and Huat describes scanning to determine that sufficient clear space appears (is formed) in the display area so that the secondary content may be embedded.

We find Appellants' contrary arguments unpersuasive. First, Appellants appear to argue that the claim requires some mechanism actively reformatting (rearranging) and re-rendering primary content to create or add white space. (Br. 16-17.) But, as we explain *supra*, nothing in the claim language necessitates such a narrow reading of the claim, and we do not agree with such a narrow construction of the limitation. Appellants' own Specification controverts such a construction – Appellants explain that their browser flows (renders/displays) the primary web page content around existing embedded advertising content in response to a user scrolling the web page. (FF 1-2.) In other words, Appellants describe dividing the screen into dedicated portions for primary and secondary content, and rendering primary content around secondary content. Appellants' arguments are not commensurate with the scope of their claim.

Secondly, Appellants argue that Huat describes waiting to display “different” content within the display. (Br. 15.) Appellants mischaracterize Huat. Huat describes loading (downloading) a scrollable HTML web page (primary content) into an active display window of a browser, and scrolling through the page (primary content). (FF 3-4; Huat ¶¶ [0007], [0035], [0044]-[0046].) Although Huat describes waiting for a change in the display, and that the change may include downloading a different page (new or different content), Huat also explicitly describes scrolling the downloaded primary content. (FF 4-5; Huat ¶¶ [0044]-[0046].) We do not understand scrolling the downloaded web page (the primary content) to mean displaying different content. Rather, we understand scrolling the web page to mean displaying previously downloaded content.

Additionally, the Examiner provides detailed findings and conclusions with respect to the Huat reference. (Ans. 3-5, 17-18.) Appellants, on the other hand, did not provide any persuasive evidence supporting their assertions of alleged error in the Examiner’s positions. It follows that Appellants have not persuaded us of error in the Examiner’s obviousness rejection of independent claim 1.

Appellants argue independent claims 1, 12, 19, 26, and 27 as a group based on independent claim 1, and do not separately argue dependent claims 3, 4, 7, 8, 15, 16, 22, and 24. (Br. 25.) Therefore, we select independent claim 1 as representative of these claims. Accordingly, for the reasons set forth in our discussion of independent claim 1 *supra*, Appellants have not persuaded us of error in the Examiner’s obviousness rejection of independent claims 1, 3, 4, 7, 8, 12, 15, 16, 19, 22, 24, 26, and 27. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

*Issue 2: Rejection of Claims 2, 13, and 20 under § 103*

The Examiner finds that the Huat reference teaches or suggests “a user action to change a portion of the primary content currently displayed in the display area.” (Ans. 5-6.) Appellants agree that Huat teaches this feature – “Huat describes receiving the user action of scrolling to change the portion of content displayed within the display interface, and in response to the change, determining whether there is suitable white space in the display area.” (Br. 23.) Appellants contend, however, that Huat does not teach reflowing content to form suitable white space in the display area – reiterating the arguments previously made with respect to claim 1 (*supra*). (Br. 22-25.)

We broadly but reasonably construe claim 2 to include the additional feature of receiving a user action (e.g., scrolling) to change a portion of content displayed; but otherwise, we find claim 2 to be commensurate in scope with claim 1. After reviewing the record on appeal, we agree with the Examiner’s undisputed finding that Huat discloses the feature of receiving the user action. Thus, we find that Huat teaches each feature of claim 2. Accordingly, we also agree with the Examiner’s conclusion of obviousness. Appellants do not separately argue claims 13 and 20. (Br. 25.) For the reasons set forth in our discussion of independent claim 1 *supra*, Appellants have not persuaded us of error in the Examiner’s obviousness rejection of dependent claims 2, 13, and 20.

*Issue 3: Rejection of Claims 5, 14, and 21 under § 103*

The Examiner finds “Huat does not explicitly teach . . . receiving a designation associated with receiving secondary content indicating that the secondary content is to be persistently displayed” (Ans. 11-12), but that “Porter teaches . . . receiving a designation associated with receiving secondary content indicating that the secondary content is to be persistently displayed.” (Ans. 12). Conversely, Appellants contend that the Huat and Porter references do not teach the features of claim 5. (Br. 25-28.) In particular, Appellants contend that “Porter does not teach or suggest receiving secondary content designated for persistent display in any area other than exclusive areas designated separate from the display area which includes the primary content.” (Br. 28.) Accordingly, we decide the question of whether the Examiner erred in finding the Huat and Porter references would have taught or suggested receiving a designation associated with receiving secondary content indicating that the secondary content is to be persistently displayed within white space within the display area regardless of a user action.

After reviewing the record on appeal, we agree with the Examiner’s findings that Huat and Porter would have taught or at least suggested to one of ordinary skill in the art the disputed feature. We begin our analysis by broadly but reasonably construing the disputed claim limitation to simply mean that the step of identifying secondary content (claim 1) includes receiving a designation, associated with (receiving) the secondary content, which indicates the secondary content is to be persistently displayed in unused space in the display area (white space or space not otherwise used to display primary content) regardless of a user action related to the primary



content. The claim does not recite any particular form the designation (or indication) must take.

We find the Porter reference describes an embedded script in the web page requesting the EDA manager (and in turn a rendering program) to display the secondary content in an EDA. (FF 8.) In other words, the script indicates advertising (secondary content) to be persistently displayed in a dedicated portion of the display (EDA). We also find, as did the Examiner, that Porter describes persistently displaying advertisement content in dedicated portions (EDAs) of the display independent of activity related to the primary content in shared portions of the display. (FF 7-8.) We therefore find that Porter describes identifying and receiving secondary content, as well as a designation to persistently display the secondary content (advertisement) in the display in space not used to display primary content regardless of a user action related to the primary content. Thus, we find that Huat and Porter describe the disputed feature. Accordingly, we agree with the Examiner's conclusion that Huat and Porter would have taught or suggested the disputed feature to an ordinarily skilled artisan.

We find Appellants's contrary arguments unpersuasive. Initially, we note that Appellants' claim 5 does not actually recite limitations (in addition to claim 1) directed to the operation of Appellants' rendering method. Rather, the claim simply recites a designation or indicator for the persistent display of secondary content acted upon by the rendering method of claim 1. Appellants also mischaracterize the Porter reference – arguing that Porter separately displays advertising content. (Br. 27-28.) Porter displays advertising content in the same display as primary content, but in a separate dedicated portion of the display. Nothing in the language of claim 1 or

dependent claim 5 excludes dividing a display (display area) into separate portions. Appellants' arguments are not commensurate with the scope of their claim.

The Examiner provides detailed findings and conclusions with respect to the Huat and Porter references. (Ans. 11-12, 18-19.) Appellants, on the other hand, did not provide any persuasive evidence supporting their assertions of alleged error in the Examiner's position. It follows that Appellants have not persuaded us of error in the Examiner's obviousness rejection of dependent claim 5.

Appellants argue dependent claims 5, 14, and 21 as a group based on claim 5. (Br. 26, 28.) Accordingly, for the reasons set forth with respect to dependent claim 5 *supra*, Appellants have not persuaded us of error in the Examiner's obviousness rejection of dependent claims 5, 14, and 21.

*Issue 4: Rejection of Claims 6 and 23 under § 103*

The Examiner finds that the reference combination of Huat and Porter “does not explicitly teach retrieving the designation from a database accessible to the viewer program,” but that Shema teaches this feature. (Ans. 13.) The Examiner also finds that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Huat and Porter to retrieve the designation from a database accessible to the viewer program as taught by Shema” in order to increase efficiency (“to efficiently retrieve the database information regarding a designation associated with the secondary content”). (Ans. 13.) Conversely, Appellants seem to assert that Shema (and the combination of Huat, Porter, and Shema) do not teach or suggest the recited feature. (Br.

29-31.) Appellants also assert that there is no motivation to combine the cited references – “there is no indication why one of ordinary skill in the art would find it obvious to modify Shema and then to further modify Huat and Porter by Shema.” (Br. 31.) Accordingly, we decide the question of whether the Examiner erred in finding the Huat, Porter, and Shema references are properly combinable, and would have taught or suggested the feature of retrieving the designation indicating that the secondary content is to be persistently displayed from a database accessible to the viewer program.

After reviewing the record on appeal, we agree with the Examiner’s findings that Huat, Porter, and Shema are properly combinable, and would have taught or at least suggested to one of ordinary skill in the art the disputed feature. We construe Appellants’ claim 6 to simply recite that receiving a designation entails retrieving the designation (i.e., retrieving designation information or that designation information is retrieved) from a database that is accessible to a viewer program. We understand the Examiner to assert that Shema generally teaches a viewer program retrieving a designation (information related to a designation) from a database. We find the Shema reference describes retrieving and/or receiving information related to a reference designation from a database. (FF 9.)

Thus, we conclude, as did the Examiner, that it would have been obvious to an ordinarily skilled artisan at the time of Appellants’ invention to combine the Huat, Porter, and Shema references because combining Shema’s teaching of retrieving and/or receiving information related to a reference designation from a database with Huat’s and Porter’s scheme for identifying secondary content utilizing a designation is tantamount to the

predictable use of prior art elements according to their established functions – an obvious improvement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). Although ultimately unnecessary to our analysis, we also find that the Examiner articulates a rationale – increased efficiency – for combining the Huat, Porter, and Shema references based on “some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

We are not persuaded by Appellants’ arguments that Shema does not teach or suggest (must be modified to teach) “a viewer which accesses a database which specifies which content is designated as secondary content to be persistently displayed,” and that the combination of Huat and Porter does not teach or suggest “the browser, or viewer program, accessing a database to determine which content is designated as secondary content.” Appellants attempt to attack the references individually, instead of addressing the combination of references. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)) (One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.) Additionally, as explained *supra*, Appellants’ arguments are also not commensurate with the scope of their claim. We note that “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *Keller*, 642 F.2d at 425.

The Examiner provides detailed findings and conclusions with respect to the Huat, Porter, and Shema references. (Ans. 13, 19-20.) Appellants, on

the other hand, did not provide any persuasive evidence supporting their assertions of alleged error in the Examiner's position. It follows that Appellants have not persuaded us of error in the Examiner's obviousness rejection of dependent claim 6.

Appellants argue dependent claims 6 and 23 as a group based on claim 6. (Br. 31.) Accordingly, for the reasons set forth with respect to dependent claim 6 *supra*, Appellants have not persuaded us of error in the Examiner's obviousness rejection of dependent claims 6 and 23.

*Issue 5: Rejection of Claim 10 under § 103*

The Examiner finds that the reference combination of Huat and Appellants' admitted prior art ("AAPA") are properly combinable and teach each feature of Appellants' claim 10. (Ans. 15.) Specifically, the Examiner finds that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention [to] modify the teachings of Huat to make changes to the document Object Model tree and reflowing the document according to the changes as in APA" it would "allow programs and scripts to dynamically access and update the content, structure and style of the document." (Ans. 15.) Appellants contend that:

there is no motivation or suggestion, either in Huat or the knowledge of one of ordinary skill in the art, for both modifying Huat to suggest reflowing primary content and for further modifying Huat to perform the reflowing of primary content by making changes to the DOM tree which specifies the underlying structure of the document and reflowing the document according to the changes in the DOM tree.

(Br. 32-33.) Accordingly, we decide the question of whether the Examiner erred in finding the Huat and AAPA references are properly combinable.

After reviewing the record on appeal, we agree with the Examiner's findings that Huat and the AAPA are properly combinable, and that it would have been obvious to an ordinarily skilled artisan at the time of Appellants' invention to combine the Huat and the AAPA. We find Huat teaches rearranging primary content comprising for example HTML documents, and displaying advertising embedded in (HTML) web pages, having standard GUI elements. (*See supra* Issue 1; FF 6.) The AAPA describes a Document Object Model (DOM), which is known in the prior art and is defined by an industry standard (W3C standard). (Spec. 2.) Thus, it would have been obvious to rearrange HTML (Web) document content (primary and secondary content) utilizing a W3C (Web industry) standard – this is tantamount to a predictable use of prior art elements according to their established functions – an obvious improvement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). Although ultimately unnecessary to our analysis, we also find that the Examiner articulates a rationale for combining Huat and the AAPA – allowing programs to dynamically access and update the content – and that this rationale is based on “some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at 418.

Appellants did not provide any persuasive evidence supporting their assertions of alleged error in the Examiner's position. It follows that Appellants have not persuaded us of error in the Examiner's obviousness rejection of dependent claim 10.

*Rejection of Claims 9, 11, 17, 18, and 25 under § 103*

Appellants do not separately argue the rejection of claims 9, 18, and 25 (Br. 31-32), or the rejection of claims 11 and 17 (Br. 34). Therefore, Appellants have not persuaded us of error in the Examiner's obviousness rejection of claims 9, 11, 17, 18, and 25 for the reasons set forth *supra*. Accordingly, we affirm the Examiner's obviousness rejection of these claims.

CONCLUSIONS OF LAW

Appellants have shown that the Examiner erred in rejecting claims 1-27 under 35 U.S.C. § 103(a) for the reasons stated *supra*.

DECISION

We affirm the Examiner's rejections of claims 1-27 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

erc

IBM Corp (AP)  
C/O Amy Pattillo  
P. O. Box 161327  
Austin, TX 78716